

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SAMUEL VAUGHN GRIFFITHS,

Defendant-Appellant.

UNPUBLISHED

March 6, 2007

No. 267661

Wayne Circuit Court

LC No. 05-009820-01

Before: Hoekstra, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to commit criminal sexual conduct, MCL 750.520g(1), and first-degree criminal sexual conduct, MCL 750.520b. The trial court sentenced defendant, as a third habitual offender, MCL 769.11, to respective concurrent terms of 5 to 10 years and 25 to 45 years in prison. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Complainant, a bus driver, alleged that defendant sexually assaulted her in the back of the bus. A dispatcher communicated with complainant several times, discerned that something was amiss, and requested that another driver check on complainant. The other driver followed complainant's bus and kept defendant in his sight when defendant exited complainant's bus.

During closing argument, the prosecutor argued that complainant's testimony was credible and was sufficient evidence on which to base a conviction. The prosecutor noted that the testimony given by the dispatcher and the other driver supported complainant's testimony, and that complainant's medical records indicated that complainant suffered physical injuries consistent with sexual assault. Defendant did not object to these statements.

Defense counsel argued that the lack of certain physical evidence supported a conclusion that a sexual assault did not occur. Furthermore, counsel contended that had defendant acted as complainant alleged, complainant would have attempted to attract the attention of the police as she was driving the bus.

During rebuttal argument, the prosecutor stated that defendant's defense seemed to be that the incident did not occur, and characterized defendant's defense as "completely unbelievable" and "desperate." Defense counsel objected to the prosecutor's characterization, and the trial court instructed the prosecutor to "Move on."

On appeal, defendant argues that the prosecutor committed misconduct and denied him a fair trial by vouching for complainant's credibility and by denigrating his defense as "completely unbelievable" and "desperate." We disagree.

The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). Prosecutorial misconduct issues are decided on a case-by-case basis. The reviewing court must examine the pertinent portion of the record, and evaluate a prosecutor's remarks in context. *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999). Prosecutorial comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial. *People v Rodriguez*, 251 Mich App 10, 30; 650 NW2d 96 (2002). A claim of prosecutorial misconduct is reviewed de novo. *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001). Absent an objection at trial to the alleged misconduct, appellate review is foreclosed unless the defendant demonstrates the existence of plain error that affected his substantial rights. Reversal is warranted only when plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). No error requiring reversal will be found if the prejudicial effect of the prosecutor's remarks could have been cured by a timely instruction. *People v Leshaj*, 249 Mich App 417, 419; 641 NW2d 872 (2002).

Defendant did not object to the prosecutor's assertion that complainant's testimony was credible; therefore, that allegation is reviewed for plain error. *Carines, supra*. A prosecutor may argue from the facts that a witness is worthy of belief, *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997), but may not vouch for a witness by injecting personal opinion into the argument or suggesting that the government has special knowledge that a witness is testifying truthfully. *People v McGhee*, 268 Mich App 600, 630; 709 NW2d 595 (2005). Here, the prosecutor noted correctly that complainant's testimony, standing alone, would constitute sufficient evidence to support a verdict of guilty. MCL 750.520h. The prosecutor also noted that complainant's testimony was supported by testimony given by her co-workers. The prosecutor did not personally vouch for complainant or suggest that she had special knowledge that complainant's testimony was truthful. Rather, the prosecutor argued from the evidence that complainant's testimony was worthy of belief. This type of argument is permissible. *Howard, supra; McGhee, supra*.

Any prejudicial effect of the prosecutor's remarks regarding complainant's testimony could have been cured by a timely instruction. *Leshaj, supra*. Moreover, after closing arguments were completed, the trial court instructed the jury that the arguments of counsel were not evidence, and that the jury was entitled to decide which witnesses it believed. A jury is presumed to follow its instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). No plain error occurred. *Carines, supra*.

Defendant objected to the prosecutor's characterization of his defense as "completely unbelievable" and "desperate;" thus, that objection is preserved. A prosecutor's argument must be evaluated in context and in light of defense arguments. *Noble, supra; Rodriguez, supra*. The prosecutor made the comments about which defendant complains in response to defendant's argument that the incident did not occur, and asserted that defendant's defense was simply not credible in light of the evidence given by complainant and the other witnesses, and the physical

evidence. The prosecutor did not improperly attack defense counsel, *People v McLaughlin*, 258 Mich App 635, 646; 672 NW2d 860 (2003), but instead argued from the evidence that defendant's theory of the case was not worthy of belief. An argument need not be couched in the blandest possible terms. *People v Matuszak*, 263 Mich App 42, 55-56; 687 NW2d 342 (2004). The prosecutor's argument, read in context, constituted fair rebuttal comment on defendant's argument. *Rodriguez, supra*.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/ Kurtis T. Wilder